

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ELIZABETH HUEBNER,

Plaintiff,

V.

AMERICAN FAMILY CONNECT  
PROPERTY AND CASUALTY  
INSRUANCE COMPANY F/K/A IDS  
PROPERTY CASUALTY INSURANCE  
COMPANY, a foreign insurer licensed to do  
business in the State of Washington,

Defendant.

No. C22-0882-RSL

**SECOND AMENDED COMPLAINT  
FOR BREACH OF CONTRACT,  
VIOLATION OF CONSUMER  
PROTECTION ACT, BAD FAITH,  
NEGLIGENCE, AND FOR  
DAMAGES UNDER THE  
INSURANCE FAIR CONDUCT ACT  
(RCW 48.30)**

COMES NOW the Plaintiff, Elizabeth Huebner, by and through her attorney, Scott Shawver, of GLP ATTORNEYS, P.S., INC., and complains and alleges against the above-named Defendant as follows:

## I. PARTIES

1.1 Plaintiff, Elizabeth Huebner, is a resident of Seattle, King County, Washington, and resided in Seattle, King County, Washington, at all times relevant and material to this Complaint.

**SECOND AMENDED COMPLAINT  
FOR BREACH OF CONTRACT, VIOLATION OF  
CONSUMER PROTECTION ACT, BAD FAITH,  
NEGLIGENCE, AND FOR DAMAGES UNDER THE  
INSURANCE FAIR CONDUCT ACT (RCW 48.30) - 1**

**GLP ATTORNEYS, P.S., INC.**  
**ATTORNEYS AT LAW**  
**2601 FOURTH AVENUE, FLOOR 6**  
**SEATTLE, WASHINGTON 98121**  
**(206) 448-1992**  
**FACSIMILE (206) 448-4640**

1  
2 1.2 Defendant, American Family Connect Property and Casualty Insurance  
3 Company f/k/a IDS Property Casualty Insurance Company (“American Family Connect”), on  
4 information and belief, was a foreign insurer, doing business in King County, Washington,  
5 and is believed to have done business in King County, Washington, at all times relevant and  
6 material to this Complaint.

7 **II. JURISDICTION AND VENUE**

8 2.1 Plaintiff was at all times relevant and material to this Complaint a resident of  
9 Seattle, King County, Washington.

10 2.2 Defendant is, on information and belief, a foreign insurer doing business in  
11 King County, Washington.

12 2.3 The motor vehicle collision that is the subject of this litigation occurred in  
13 Seattle, King County, Washington.

14 2.4 This Court has subject matter jurisdiction over this action based on diversity of  
15 citizenship and because the amount in controversy exceeds \$75,000.00, pursuant to 28 U.S.C.  
16 § 1332.

17 2.5 Venue is property in this District, pursuant to 28 U.S.C. § 1391(d). Venue is  
18 proper in United States District Court, Western District of Washington.

19 2.6 Plaintiff served Notice to Defendant of her intent to bring action against  
20 Defendant pursuant to the Insurance Fair Conduct Act (IFCA) on or about July 28, 2020 and  
21 also on June 2, 2022, and more than twenty (20) days has elapsed since Plaintiff served her  
22 notices on Defendant. Defendant failed to resolve the basis for the complaint within the  
23 allowed twenty days after each notice.

2.7 Defendant did not resolve the basis for the IFCA complaint within the twenty days provided by RCW 48.30.015.

### III. FACTS

3.1 Date: Plaintiff's injuries arise out of an automobile collision with an underinsured motorist that occurred on **March 5, 2014**.

3.2 Location: The collision occurred on 8<sup>th</sup> Avenue NW, in Seattle, King County, Washington, on **March 5, 2014**.

3.3 Details:

- a) On **March 5, 2014**, Plaintiff entered the intersection of 8<sup>th</sup> Avenue NW and NW 95<sup>th</sup> Street.
- b) As Plaintiff had the right of way, driver David Livingstone ran a stop sign and struck into Ms. Huebner's vehicle.
- c) Mr. Livingstone's conduct was negligent.
- d) As a result of the collision, Ms. Huebner sustained physical injuries and damages.
- e) Plaintiff was injured in an automobile collision that occurred on **March 5, 2014**.

3.4 The at-fault driver of the other vehicle, David Livingstone, did not have liability insurance at the time of the collision.

3.5 At the time of the collision, Plaintiff was insured by Defendant with auto policy number **AI 01378482**. The policy provides, among other things, up to \$250,000.00 for uninsured motorist coverage bodily injury.

3.6 This policy made this promise:

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### Part III - Underinsured Motorists Coverage

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The insuring agreement provision is replaced by the following:

#### Coverage C - Underinsured Motorists Coverage

We will pay compensatory damages which an **insured person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** due to:

1. **Bodily injury** sustained by that person and caused by an accident; and
2. **Property damage** caused by an accident if the declarations indicates that both **bodily injury** and **property damage** apply for Underinsured Motorists Coverage.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **underinsured motor vehicle**.

A deductible of \$100 applies for property damage to **your insured car** as the result of an accident. But, if the accident involves a hit and run motor vehicle as described in the definition of **underinsured motor vehicle**, the deductible shall be \$300.

3.7 The vehicle the uninsured driver David Livingstone was driving qualifies as an “underinsured motor vehicle” under the auto policy in effect on the date of the collision.

3.8 Plaintiff presented demands to Defendant under her uninsured motorist (UM) policy with Defendant for bodily injury.

3.9 These demands included documentation of injuries and treatment costs exceeding **\$80,000.00** and included medical records discussing Plaintiff's injuries and chronic pain caused by the injuries received from the collision.

3.10 These demands also included documentation of lost wages and income.

3.11 After receiving a demand in February 2020, Defendant requested Plaintiff's medical records from before the collision.

3.12 Plaintiff provided the requested records.

3.13 In response to the demand received in February 2020, Defendant offered to pay Plaintiff \$50,000.00 to resolve Plaintiff's UIM claim.

3.14 Defendant later offered to pay \$150,000.00 to resolve Plaintiff's UIM claim.

3.15 On or about July 28, 2020 and June 2, 2022, Plaintiff complied with the pre-suit notice requirement of RCW § 48.30.015(8)(a), providing Defendant written notice of the basis of her cause of action.

3.16 Defendant did not resolve the basis of Plaintiff's cause of action within the twenty days allowed by RCW § 48.30.015(8)(b).

#### IV. LIABILITY AND CAUSES OF ACTION

##### 4.1 Claim Under UIM Contract of Insurance

- a) At all times relevant and material hereto, Defendant had in full force and effect under its automobile policy number **AI01378482**, which provided under-insured motorist coverage to Plaintiff. Gg
- b) As a direct and proximate cause of the negligence and tortious conduct of Livingstone, Plaintiff sustained injuries to her head, legs and knees, hands and arms, neck, and back.
- c) As a direct and proximate cause of the negligence and tortious conduct of the under-insured driver, and subsequent personal injuries and medical treatment, Plaintiff made an under-insured motorist claim with Defendant.
- d) Defendant's contract with Plaintiff, policy number **AI01378482**, which was in full force and effect on **March 5, 2014**, provided under-insured motorist bodily injury coverage.

- e) Plaintiff is entitled to benefits under the under-insured motorist provisions of her policy with Defendant for the incident complained of.
- f) Livingstone's insurer, Safeco Insurance Company, did not contest liability and paid the limits of his liability policy.
- g) The under-insured motorist portion of Plaintiff's policy promised to pay "compensatory damages for bodily injury an insured is legally entitled to recover from the owner or driver of an underinsured motor vehicle."
- h) The driver of the vehicle which struck Plaintiff was an underinsured motor vehicle as defined in Plaintiff's policy of insurance.
- i) Defendant has not offered the full amount to which Plaintiff is legally entitled under her policy of insurance.

4.2 Violation of the Insurance Fair Conduct Act:

- a) Defendant's actions violated RCW § 48.30.010 by unreasonably denying payment of UIM benefits in violation of the Insurance Fair Conduct Act.
- b) Defendant did not conduct a reasonable investigation prior to denying Plaintiff's claim.
- c) Defendant did not give equal consideration to Plaintiff's interests prior to denying Plaintiff's claim.
- d) Due to Defendant's misconduct, Plaintiff is entitled to recover her actual damages sustained, together with the costs of the action, including reasonable attorney's fees and litigation costs.

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2 4.3 Violation of the Unfair Claims Settlement Act: Defendant's actions are in  
3 violation of the Unfair Settlement Practices Act as set forth in WAC § 284-30 et. seq.,  
4 including requiring insurers to conduct a reasonable investigation prior to denying a claim, as  
5 well as in violation of its duty not to compel its own insured to initiate litigation to obtain  
6 payment of \$250,000.00 in UIM policy benefits. Violation of the Unfair Claims Settlement  
7 Act constitutes a violation of the Insurance Fair Conduct Act (RCW § 48.03.015) and the  
8 Consumer Protection Act (RCE § 19.86).

9 4.4 Breach of Contract: Defendant's actions are in violation of the express or  
10 implied terms and conditions of the insurance contract and/or reasonable expectations of its  
11 insured to the terms and conditions of the insurance policy.

12 4.5 Violation of Consumer Protection Act: Defendant's actions are in violation of  
13 the Consumer Protection Act, RCW § 19.86:

- 14 a) Defendant's conduct constituted unfair and deceptive practices in trade  
15 or commerce.
- 16 b) Defendant's conduct violated claim handling regulations described at  
17 WAC § 284-30-330.
- 18 c) Defendant's conduct was a wrongful denial of contract benefits, and  
19 thus caused injury to Plaintiff's "business or property" in violation of  
20 RCW § 19.86.

21 4.6 Breach of Common Law Good Faith Duty: Defendant's actions are in violation  
22 of RCW 48.30.010 in its duty of good faith under RCW 48.01.030 requiring that all actions  
23 be actuated by good faith, to abstain from deception, and practice honesty and equity in all  
24  
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2 matters related to the business of insurance. Defendant unreasonably denied payment of  
3 amounts due under her policy.

4 4.7 Negligence: Defendant was negligent and in violation of its duty to exercise  
5 reasonable care toward Plaintiff.

6 4.8 Proximate Cause: As a direct and proximate cause of Defendant's breach of  
7 their duties, Plaintiff was forced to file suit against Defendant to receive the full amount of  
8 her available UIM insurance coverage.

9 **V. DAMAGES**

10 5.1 As a direct and proximate result of the negligence alleged herein, Plaintiff has  
11 suffered physical injuries and Plaintiff is entitled to fair and reasonable compensation.

12 5.2 As a direct and proximate result of the negligence alleged herein, Plaintiff has  
13 incurred and may continue to incur medical expenses and other out-of-pocket expenses, and  
14 Plaintiff is entitled to fair and reasonable compensation.

15 5.3 As a direct and proximate result of the negligence alleged herein, Plaintiff has  
16 suffered and may continue to suffer physical pain and suffering, and Plaintiff is entitled to fair  
17 and reasonable compensation.

18 5.4 As a direct and proximate result of the negligence alleged herein, Plaintiff has  
19 suffered mental and emotional distress, loss of enjoyment of life, past and future disability,  
20 permanency of injury, and Plaintiff is entitled to fair and reasonable compensation.

21 5.5 As a direct and proximate result of the negligence alleged herein, Plaintiff has  
22 sustained past wage loss and loss of future earning capacity.

23 As a direct and proximate result of the negligence alleged herein, Plaintiff has incurred  
24 additional attorney fees.  
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2 5.6 Plaintiff is entitled to reasonable attorney's fees incurred in the prosecution of  
3 this action as authorized by the Insurance Fair Conduct Act and Consumer Protection Act.

4 5.7 Plaintiff is entitled to costs and disbursements herein incurred in the prosecution  
5 of this action and as authorized by the Insurance Fair Conduct Act and Consumer Protection  
6 Act.

7 5.8 Plaintiff is entitled to enhanced actual damages under the Insurance Fair  
8 Conduct Act and the Consumer Protection Act.

9 5.9 Plaintiff is entitled to prejudgment interest on all medical and other out-of-  
10 pocket expenses directly and proximately caused by the negligence alleged in this Complaint.

11 **VI. WAIVER OF PHYSICIAN/PATIENT PRIVILEGE**

12 6.1 Plaintiff asserts the physician/patient privilege for 88 days following the filing  
13 of this Complaint. On the 89th day following the filing of this Complaint, the Plaintiff hereby  
14 waives the physician/patient privilege.

15 6.2 The waiver is conditioned and limited as follows: (1) The Plaintiff does not  
16 waive her constitutional right of privacy; (2) the Plaintiff does not authorize contact with any  
17 of her health care providers except by judicial proceeding authorized by the Rules of Civil  
18 Procedure; (3) Defendant representatives are specifically instructed not to attempt ex parte  
19 contacts with Plaintiff's health care providers; and (4) Defendant's representatives are  
20 specifically instructed not to write letters to Plaintiff's health care providers telling them that  
21 they may mail copies of records to the Defendant.

22 In the case of *Loudon v. Mhyre*, 110 Wn.2d 676, 756 P.2d 138 (1988), the Supreme  
23 Court dealt very simply with the issue of ex parte contact with the Plaintiff's physicians:

24 The issue presented is whether defense counsel in a personal injury action  
25 may communicate ex parte with the Plaintiff's treating physicians when the

1 Plaintiff has waived the physician/patient privilege. We hold that defense  
2 counsel may not engage in ex parte contact, but is limited to the formal  
3 discovery methods provided by court rule.

4 *Loudon*, at 675-676.

5 Wherefore, Plaintiff prays for judgment against Defendant, and prays for relief as  
6 follows:

7 **VII. RELIEF SOUGHT AGAINST DEFEDANT**

8 7.1 For judgment against Defendant regarding the scope of remedies available to  
9 Plaintiff, his contract rights under the policy of UIM coverage, as well as the scope of the  
10 statutory obligations imposed upon both parties by statute;

11 7.2 For UIM policy limits benefits under Plaintiff's policy with Defendant;

12 7.3 For treble damages against Defendant for bad faith and violation of the  
Insurance Fair Conduct Act and the Consumer Protection Act;

13 7.4 Judgment on all special damages stemming from the foregoing allegations;

14 7.5 Judgment on all general damages stemming from the foregoing allegations;

15 7.6 For reasonable hourly attorney fees, costs of experts, and costs of suit; and

16 7.7 For such other and further relief as the court deems just, equitable and proper  
17 for Plaintiff at the time of trial.

**VIII. JURY DEMAND**

8.1 Plaintiffs demand a trial by a jury.

DATED this 12<sup>th</sup> day of October, 2022.

GLP ATTORNEYS, P.S., INC.



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Scott Shawver, WSBA #24048  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the **12<sup>th</sup> day of October 2022**, I electronically filed a true and accurate copy of the document to which this declaration is affixed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following: I promptly caused a copy of the foregoing to be delivered upon counsel for the Defendant by means of the Court's electronic filing system and e-mail.

Rory W. Leid, WSBA # 25075 Dylan R. Knapp, WSBA # 58394 Wathen Leid Hall & Rider, P.C. 222 Etruria Street Seattle, WA 98121 <a href="mailto:rleid@cwlhlaw.com">rleid@cwlhlaw.com</a> <a href="mailto:dknapp@cwlhlaw.com">dknapp@cwlhlaw.com</a> Attorney for Defendants	<input type="checkbox"/> U.S. Postal Service (First Class) <input type="checkbox"/> Facsimile to: <input type="checkbox"/> U.S. Postal Service Express Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> E-Service <input checked="" type="checkbox"/> E-Filed <input checked="" type="checkbox"/> E-Mailed
G. Lee Raaen Attorney at Law 3301 Burke Ave. N. # 340 Seattle, WA 98103 Phone: 206 682-9580 <a href="mailto:lee@lraaen.com">lee@lraaen.com</a> <i>courtesy copy</i>	<input type="checkbox"/> U.S. Postal Service (First Class) <input type="checkbox"/> Facsimile to: <input type="checkbox"/> U.S. Postal Service Express Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> E-Service <input checked="" type="checkbox"/> E-Filed <input checked="" type="checkbox"/> E-Mailed

DATED this 12<sup>th</sup> day of October, 2022

/s/ Danielle Menillo

Danielle Menillo,  
Paralegal to Scott Shawver  
GLP Attorneys, P.S., Inc.

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